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TAGS: EFIN ECON HK
SUBJECT: HONG KONG EDGES CLOSER TO SHARING TAX INFO,
DODGING TAX HAVEN LABEL

REF: A. HONG KONG 40
¶B. HONG KONG 540
¶C. HONG KONG 1249

Classified By: Economic and Political Chief Martin Murphy, Reasons 1.4
b/d

¶1. (SBU) A bill that will allow Hong Kong to meet OECD 2004 requirements for the sharing of tax information has passed out of the Legislative Committee's (LegCo) review process and is expected to become law shortly after the new year. The amendments to the tax code, once passed, will allow Hong Kong to sign Comprehensive Double Taxation Agreements (CDTAs) based on the most recent OECD 2004 global standards for Exchange of Tax Information (EoI). Hong Kong Financial Services and Treasury Bureau (FSTB) Permanent Secretary Clement Leung said the process had not been as smooth or easy as the Hong Kong Government (HKG) had expected. Lawmakers, industry and the public raised concerns about the HKG's ability to protect confidential financial information, the thresholds that would allow Hong Kong to share information with agreement partners, and the potential threat to Hong Kong's competitiveness. Leung noted that the HKG submitted the bill in July and had moved quickly to address international concerns.

¶2. (SBU) Public comments on the bill from the Hong Kong Law Society, Banking Association and tax practitioners focused on the degree to which safeguards to protect local accountholder information could be included in the subsidiary legislation or whether these safeguards should be promulgated by rule. The HKG sought to preserve the maximum degree of flexibility and initially proposed rules-based safeguards, but agreed to codify safeguard principles in order to speed passage of the bill, said Leung. These safeguards would ensure no information would be automatically or spontaneously shared with agreement partners, that information shared would not be made publicly available, and information obtained through a specific request would not be used to investigate a third party.

¶3. (SBU) Hong Kong's tax law amendments are scheduled for the second reading in LegCo on January 6, 2010 and should be passed by the full LegCo shortly thereafter. Leung noted that despite qualms about competitiveness, privacy and data protection, the LegCo was quite supportive of the bill and understood the need to adopt OECD 2004 standards as part of a strategy to demonstrate to the world that Hong Kong was not a tax haven and was fully compliant with global best practices. He expected there might be one technical amendment proposed before the bill was signed into law early next year, but offered that it was unlikely that any amendment would fundamentally alter the key provisions of the bill.

¶4. (C) LegCo members and other stakeholders repeatedly looked to Singapore's legislation as a model, said Leung. Hong Kong-based tax practitioners were keen to avoid measures that might disadvantage Hong Kong vis-a-vis Singapore as an investment destination. Codifying safeguards, as Singapore does, would reassure local observers that Hong Kong's rules would not be easily changed and that the Special Administrative Region would minimize business lost to other jurisdictions with more lenient tax information sharing standards. Hong Kong officials were already in working level discussions with "seven or eight potential CDTA partners", with the expectation that Hong Kong would sign six to seven CDTAs in the first quarter of 2010, he said. Leung added that the French had already agreed on a draft text. (Note: Senior Trade Commissioner at the French Consulate General in Hong Kong Jean-Claude Bernard confirmed that French Finance Minister Christine Lagarde had initialed a draft agreement during her October 2009 visit to Hong Kong. He expected the agreement to be signed as soon as the law takes effect. End Note.)

¶5. (C) Comment: Increased global attention on tax evasion and Hong Kong's failure to adopt OECD 2004 standards for EoI have senior officials worried that their ambition for Hong Kong to be a global financial center could be jeopardized by its designation as a "tax haven". They abandoned their normally deliberate law-making pace to push this bill through the LegCo as quickly as possible in the hope that adoption of the OECD 2004 standard and quick agreement on several CDTAs will move them out of the sights of G20 regulators. While Leung did not suggest negotiations with the U.S. on a CDTA, he implied Hong Kong would welcome U.S. interest in such an agreement, particularly in light of reports of Hong

Kong-registered companies being used by UBS clients convicted of tax evasion and Congressional proposals that would include Hong Kong on lists of "tax haven" jurisdictions. End Comment.
MARUT